

IN THE MATTER OF

Iacobucci

VS

Town of Bonneau, et al.

TRANSCRIPT OF DEPOSITON OF

Brian S. Batterton

On October 4, 2018

Reported by Jennifer D. Hamon
Certified Court Reporter



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<p style="text-align: right;">45</p> <p>1 probable cause. I stick with, like in this case, 2 for example, that I believe that Chief Fuda acted 3 consistent with generally accepted police 4 practice and training mandates and legal mandates 5 in his belief that he could make an arrest of 6 Ms. Iacobucci, but I try to shy away from saying 7 whether or not I believe there was actually 8 probable cause. 9 Q And you would agree, obviously, that 10 one of the elements that the Plaintiff has to 11 prove in this case is that the arrest -- in terms 12 of the false arrest claim and malicious 13 prosecution, that there was not probable cause 14 for the arrest; right? 15 MR. PLYLER: Object to the form. 16 You can answer. 17 A That's one of the things that the 18 Plaintiff has to prove. But the other thing is 19 that no reasonable officer would be able to 20 conclude that there was probable cause. So I 21 believe that it is appropriate for me to opine 22 whether a reasonable officer in that situation 23 could believe that he was acting appropriately. 24 Q And with probable cause? 25 A Well, that would be acting</p>	<p style="text-align: right;">47</p> <p>1 allow you to make an arrest without probable 2 cause; right? 3 A Correct. 4 Q So if your opinion is that Mr. Fuda 5 was acting in compliance with legal mandates at 6 the time he made the arrest, then that would 7 necessarily involve that he was making the arrest 8 with probable cause? 9 MR. CLEMENT: Objection to form. 10 Q Right? 11 A It would mean that I'm opining that 12 he -- that another reasonable officer could 13 believe that. 14 Q And when you say that, just so the 15 record's clear, would believe that he had 16 probable cause to make the arrest; right? 17 MR. PLYLER: Objection. 18 A Yes, that another reasonable officer 19 could conclude that the officer had probable 20 cause to make the arrest. 21 Q Have you been qualified as an expert 22 in any cases since portions of your opinions were 23 excluded in the Newkirk case? 24 A I don't know. I don't know the dates 25 on the Newkirk case versus this other -- these</p>
<p style="text-align: right;">46</p> <p>1 appropriately. 2 Q And that's essentially, in terms of 3 what you are opining in this case and how it has 4 been -- the type of opinions that you're giving 5 has been adjusted since Newkirk, that would 6 essentially be it in a nutshell; right? 7 MR. PLYLER: Object to the form. 8 You can answer. 9 A As far as the way I characterize my 10 opinions so as not to intrude into the judge's 11 territory, absolutely, that would -- that's what 12 I have changed is I stick much more toward the 13 police practice aspect and what a reasonable 14 officer would think in a certain situation based 15 on the totality of the circumstances. 16 Q And do you intend to tell the jury, if 17 you're allowed to do so, that a reasonable 18 officer in Fuda's position in this case would 19 have concluded that he had probable cause to make 20 the arrest? 21 A I believe that a reasonable officer in 22 this situation would have concluded that he was 23 acting consistent with generally accepted police 24 practice and legal mandates in making the arrest. 25 Q And legal mandates obviously don't</p>	<p style="text-align: right;">48</p> <p>1 other cases. 2 Q Can you think of any testimony that 3 you've given at trial since the Newkirk case? 4 A Like I said, I don't know. I'm just 5 not clear on the dates of the trials and the 6 Newkirk case. 7 Q How would we be able to find that out? 8 Because as we discussed earlier, we're entitled 9 to know the testimony you've given for the last 10 four years. And right now I'm trying to -- 11 A I guess looking at the docket for 12 those cases and when they came to trial and when 13 the judge signed the order on the Enzor case. I 14 don't have access to some of those systems in 15 South Carolina that you would. 16 Q I'll see if I can find us a date on 17 the Newkirk opinion. 18 A I know the South Carolina -- if I may? 19 Q Please. 20 A The South Carolina versus -- let me 21 find the name of the case. 22 Q The Beaufort case? 23 A No. The Rene Shelley as Personal 24 Representative for the Estate of Lindler versus 25 South Carolina DPS, that was not a probable cause</p>